

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,
and
STATE OF NORTH CAROLINA,
ex rel., WILLIAM G. ROSS, JR., SECRETARY,
NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT & NATURAL RESOURCES,

COMPLAINT

Plaintiffs,

vs.

CIVIL ACTION NO:

ALBEMARLE ELECTRIC MEMBERSHIP CORPORATION; BERKELEY ELECTRIC COOPERATIVE, INC.; BLACK RIVER ELECTRIC COOPERATIVE, INC.; BLUE RIDGE ELECTRIC MEMBERSHIP CORPORATION; CAPE HATTERAS ELECTRIC MEMBERSHIP CORPORATION; CAROLINA POWER AND LIGHT COMPANY D/B/A PROGRESS ENERGY CAROLINAS, INC.; CITY OF WILSON, NC; COASTAL ELECTRIC COOPERATIVE, INC.; EDGECOMBE-MARTIN COUNTY ELECTRIC MEMBERSHIP CORPORATION; EDISTO ELECTRIC COOPERATIVE, INC.; HALIFAX ELECTRIC MEMBERSHIP CORPORATION; LITTLE RIVER ELECTRIC COOPERATIVE, INC.; LUMBEE RIVER ELECTRIC MEMBERSHIP CORPORATION; LYNCHES RIVER ELECTRIC COOPERATIVE, INC.; MID-CAROLINA ELECTRIC COOPERATIVE, INC.; NEWBERRY ELECTRIC COOPERATIVE, INC.; PALMETTO ELECTRIC COOPERATIVE, INC.; PEE DEE ELECTRIC MEMBERSHIP CORPORATION; PIEDMONT ELECTRIC MEMBERSHIP CORPORATION; PITT AND GREENE ELECTRIC MEMBERSHIP CORPORATION; ROANOKE ELECTRIC MEMBERSHIP CORPORATION; RUTHERFORD ELECTRIC MEMBERSHIP CORPORATION; SANTEE ELECTRIC COOPERATIVE, INC.; SOUTH CAROLINA ELECTRIC & GAS COMPANY; SURRY-YADKIN ELECTRIC MEMBERSHIP CORPORATION; TRI-COUNTY ELECTRIC

COOPERATIVE, INC.; AND TRI-COUNTY
ELECTRIC MEMBERSHIP CORPORATION;

Defendants.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of North Carolina, *ex rel.* William G. Ross, Jr., Secretary, North Carolina Department of Environment and Natural Resources (“State”), file this Complaint and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for recovery of response costs and for declaratory relief pursuant to Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9607(a) and 9613(g)(2). Plaintiffs seek recovery of all response costs incurred, and to obtain a declaratory judgment as to liability for costs to be incurred, by the United States and the State in response to the release or threat of release of hazardous substances at or from the Carolina Transformer Superfund Site, located near Fayetteville, in Cumberland County, North Carolina (“Site”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. § 1391(b) and (c), because the claim arose within the Eastern District of North Carolina.

DEFENDANTS

4. The following Defendants are incorporated under the laws of the State of North Carolina and, at times material hereto, were doing business in this judicial district: Albemarle Electric Membership Corporation (hereafter, Electric Membership Corporation will be abbreviated as “EMC”), Blue Ridge EMC, Cape Hatteras EMC, Carolina Power and Light Company d/b/a Progress Energy Carolinas, Inc. (henceforth “CP&L”); City of Wilson (municipal corporation), Edgecombe-Martin County EMC, Halifax EMC, Lumbee River EMC, Pee Dee EMC, Piedmont EMC, Pitt and Greene EMC, Roanoke EMC, Rutherford EMC, Surry-Yadkin EMC, and Tri-County EMC.

5. The following Defendants are incorporated under the laws of the State of South Carolina and, at times material hereto, were doing business in this judicial district: Berkeley Electric Cooperative, Inc., Black River Electric Cooperative, Inc., Coastal Electric Cooperative, Inc., Edisto Electric Cooperative, Inc., Little River Electric Cooperative, Inc., Lynches River Electric Cooperative, Inc., Mid-Carolina Electric Cooperative, Inc., Newberry Electric Cooperative, Inc., Palmetto Electric Cooperative, Inc., Santee Electric Cooperative, Inc., South Carolina Electric & Gas Company (henceforth “SCE&G”), and Tri-County Electric Cooperative, Inc.

6. Each Defendant is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

7. The Site consists of approximately five acres of land, located 1 mile northeast of Fayetteville, north of the intersection of US Hwy 301 and River Road, in Cumberland County,

North Carolina.

8. From approximately 1959 through 1984, the Carolina Transformer Company, Inc. ("CT") serviced and repaired (including uprating and rewinding), rebuilt, scrapped, purchased, and sold, electrical transformers, voltage regulators, and other electrical equipment at the Site.

9. Some of the electrical equipment serviced, repaired, rebuilt, scrapped or disposed of at the Site contained copper.

10. CT recovered copper wire from some electrical equipment and burned the coating off the wire.

11. Some of the electrical equipment serviced, repaired, rebuilt, scrapped or disposed of at the Site contained oil containing polychlorinated biphenyls ("PCBs").

12. During service, repair, rebuilding, scrapping, disposal and copper recovery of electrical equipment at CT, materials were spilled, leaked or drained from the electrical equipment.

13. In the course of CT's business, oil containing PCBs spilled, leaked or was drained from transformers and other electrical equipment onto the Site's surface, entering soils, sediments, and groundwater.

14. Each Defendant arranged for its electrical equipment to be sent to the Site for a transaction involving service, repair, rebuilding, scrapping, and/or disposal.

15. Some of the electrical equipment owned and sent by each Defendant to the Site contained hazardous substances, including PCBs.

16. During CT's operations at the Site, hazardous substances including PCBs, dioxins/furans, and copper, were released, deposited, stored, disposed of, or otherwise came to

be located at the Site.

17. The Site was placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, in 1987.

18. From 1988 to March 1991, EPA worked on a Remedial Investigation and Feasibility Study for the Site, which found widespread contamination from PCBs, dioxins/furans, and copper.

19. EPA found hazardous substances at the Site including PCBs, dioxins/furans, copper, barium, benzene, bis(2-ethylhexyl)phthalate, chromium, dichlorobenzene, lead, manganese, nickel, and vanadium.

20. In August 1991, EPA issued the Record of Decision ("ROD"), outlining the selected remedy for the Site, including the on-site solvent extraction of excavated soils and sediments, and the installation of groundwater extraction wells with a treatment system to remove metals and organic contaminants.

21. The ROD called for *inter alia* "excavation of the contaminated soil with PCBs in excess of 1 ppm and use of a solvent extraction process to separate organic contaminants such as PCBs, dioxins/furans, volatile organics, and polynuclear aromatic compounds from the soil and sediments. The process will convert inorganic contaminants such as lead and copper to lower solubility hydroxides thereby reducing their mobility."

22. The ROD was amended in 2005 to change the previously proposed active groundwater remedy to monitored natural attenuation for ten years. EPA's estimated future costs at the Site related to groundwater monitoring are approximately \$500,000.

23. EPA has incurred response costs of more than \$33 million plus interest, conducting

response activities at or in connection with the Site, including, but not limited to, remedial investigations, the remedial action, negotiations with several potentially responsible parties, and indirect costs.

24. Pursuant to Section 104(c) of CERCLA, 42 U.S.C. § 9604(c), the State reimbursed EPA for costs of \$2,099,521.

25. EPA has unreimbursed past costs of approximately \$31 million.

CLAIM FOR RELIEF

26. The allegations of Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –

. . .

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances owned or possessed by such person,...., at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan; . . .

28. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

29. PCBs, dioxins/furans, copper, barium, benzene, bis(2-ethylhexyl)phthalate, chromium, dichlorobenzene, lead, manganese, nickel, and vanadium, are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

30. Releases and threatened releases of hazardous substances occurred at the Site, within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

31. In response to the release or threat of release of hazardous substances at the Site, EPA conducted a removal action at the Site, removing 975 tons of PCB contaminated soil from the Site in 1984.

32. In response to the release or threat of release of hazardous substances at the Site, EPA conducted a remedial action at the Site, initiating physical on-Site remedial construction in or about November 1999.

33. EPA's actions at the Site constitute a "response" action, as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

34. The release or threatened release of hazardous substances into the environment at the Site, within the meaning of Section 101(22), 42 U.S.C. § 9601(22), has caused the United States to incur response costs.

35. EPA issued notice and demand letters to Defendants demanding payment of unreimbursed costs at the Site. The demand initiated the accrual of prejudgment interest on those costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

36. Defendant Albemarle EMC by contract, agreement, or otherwise, arranged for the

disposal or treatment at the Site of hazardous substances owned or possessed by Albemarle EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

37. Defendant Berkeley Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Berkeley Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

38. Defendant Black River Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Black River Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

39. Defendant Blue Ridge EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Blue Ridge EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including

interest.

40. Defendant Cape Hatteras EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Cape Hatteras EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

41. Defendant CP&L by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by CP&L, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

42. Defendant City of Wilson by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by City of Wilson, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

43. Defendant Coastal Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Coastal Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National

Contingency Plan, including interest.

44. Defendant Edgecombe-Martin County EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Edgecombe-Martin County EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

45. Defendant Edisto Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Edisto Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

46. Defendant Halifax EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Halifax EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

47. Defendant Little River Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Little River Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions

incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

48. Defendant Lumbee River EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Lumbee River EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

49. Defendant Lynches River Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Lynches River Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

50. Defendant Mid-Carolina Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Mid-Carolina Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

51. Defendant Newberry Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by

Newberry Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

52. Defendant Palmetto Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Palmetto Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

53. Defendant Pee Dee EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Pee Dee EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

54. Defendant Piedmont EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Piedmont EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

55. Defendant Pitt and Greene EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Pitt and

Greene EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site that were not inconsistent with the National Contingency Plan, including interest.

56. Defendant Roanoke EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Roanoke EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

57. Defendant Rutherford EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Rutherford EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

58. Defendant Santee Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Santee Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

59. Defendant SCE&G by contract, agreement, or otherwise, arranged for the disposal or

treatment at the Site of hazardous substances owned or possessed by SCE&G, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

60. Defendant Surry-Yadkin EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Surry-Yadkin EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

61. Defendant Tri-County Electric Cooperative, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Tri-County Electric Cooperative, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

62. Defendant Tri-County EMC by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Tri-County EMC, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all costs of response actions incurred by the United States or the State at or in connection with the Site not inconsistent with the National Contingency Plan, including interest.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, the United States of America and the State, pray that this Court:

1. Enter judgment against each and all of the Defendants named herein, jointly and severally, in favor of the United States and the State for all response costs incurred by the United States and the State with respect to the Site, plus pre-judgment interest;
2. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Defendants, jointly and severally, are liable for all future costs to be incurred by the United States and the State in response to the release or threat of release of hazardous substances at or from the Site; and
3. Grant such other relief as this Court deems appropriate.

Respectfully submitted,

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